



SMALL BUSINESS ADMINISTRATION

13 CFR Parts 107, 120, 142, and 146

RIN: 3245-AI01

Civil Monetary Penalties Inflation Adjustments

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is amending its regulations to adjust for inflation the amount of certain civil monetary penalties that are within the jurisdiction of the agency. These adjustments comply with the requirement in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, to make annual adjustments to the penalties.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Inflation Adjustment Act), Public Law 114-74, 129 Stat. 584, was enacted. This act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 104 Stat. 890 (the 1990 Inflation Adjustment Act), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Inflation Adjustment Act required agencies to issue a final rule by August 1, 2016, to adjust the level of civil monetary penalties with an initial

“catch-up” adjustment and to annually adjust these monetary penalties for inflation by January 15 of each subsequent year.

Based on the definition of a “civil monetary penalty” in the 1990 Inflation Adjustment Act, agencies are to make adjustments only to the civil penalties that (i) are for a specific monetary amount as provided by Federal law or have a maximum amount provided for by Federal law; (ii) are assessed or enforced by an agency; and (iii) are enforced or assessed in an administrative proceeding or a civil action in the Federal courts. Therefore, penalties that are stated as a percentage of an indeterminate amount or as a function of a violation (penalties that encompass actual damages incurred) are not to be adjusted.

SBA published in the *Federal Register* an interim final rule with its initial adjustments to the civil monetary penalties, including an initial “catch-up” adjustment, on May 19, 2016, (81 FR 31489) with an effective date of August 1, 2016. SBA published its first annual adjustments to the monetary penalties on February 9, 2017 (82 FR 9967), with an immediate effective date. SBA published its subsequent annual adjustments for 2018 on February 21, 2018 (83 FR 7361), for 2019 on April 1, 2019 (84 FR 12059), for 2020 on March 10, 2020 (85 FR 13725), for 2021 on September 24, 2021 (86 FR 52955), and on May 11, 2022 (87 FR 28756), all with immediate effective dates. This rule will establish the adjusted penalty amounts for 2023 with an immediate effective date upon publication.

On December 15, 2022, the Office of Management and Budget (OMB) published its annual guidance memorandum for 2023 civil monetary penalties inflation adjustments (M-23-05, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015). The memorandum provides the formula for calculating the annual adjustments based on the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October

preceding the adjustment, and specifically on the change between the October CPI-U preceding the date of adjustment and the prior year's CPI-U. Based on this methodology, the 2023 civil monetary penalty inflation adjustment factor is 1.07745 (October 2022 CPI-U (298.012) / October 2021 CPI-U (276.589)). The annual adjustment amounts identified in this rule were obtained by applying this multiplier of 1.07745 to those penalty amounts that were published in SBA's 2022 adjustments to civil monetary penalties at 87 FR 28756 (May 11, 2022).

II. Civil Monetary Penalties Adjusted by This Rule

This rule adjusts civil monetary penalties authorized by the Small Business Act, the Small Business Investment Act of 1958 (SBI Act), the Program Fraud Civil Remedies Act, and the Byrd Amendment to the Federal Regulation of Lobbying Act. These penalties and the implementing regulations are discussed below.

1. 13 CFR 107.665 – Civil Penalties.

SBA licenses, regulates, and provides financial assistance to financial entities called small business investment companies (SBICs). Pursuant to section 315 of the SBI Act, 15 U.S.C. 687g, SBA may impose a penalty on any SBIC for each day that it fails to comply with SBA's regulations or directives governing the filing of regular or special reports. The penalty for non-compliance is incorporated in § 107.665 of the SBIC program regulations.

This rule amends § 107.665 to adjust the current civil penalty from \$291 to \$314 per day of failure to file. The current civil penalty of \$291 was multiplied by the multiplier of 1.07745 to reach a product of \$314, rounded to the nearest dollar.

2. 13 CFR 120.465 – Civil penalty for late submission of required reports.

According to the regulations at § 120.465, any SBA Supervised Lender, as defined in 13 CFR 120.10, that violates a regulation or written directive issued by the SBA Administrator regarding the filing of any regular or special report is subject to the

civil penalty amount stated in § 120.465(b) for each day the company fails to file the report, unless the SBA Supervised Lender can show that there is reasonable cause for its failure to file. This penalty is authorized by section 23(j)(1) of the Small Business Act, 15 U.S.C. 650(j)(1).

This rule amends § 120.465(b) to adjust the current civil penalty to \$7,805 per day of failure to file from \$7,244 per day of failure to file. The current civil penalty of \$7,244 was multiplied by the multiplier of 1.07745 to reach a product of \$7,805, rounded to the nearest dollar.

3. 13 CFR 120.1500 – Types of Formal Enforcement Actions—SBA Lenders.

According to the regulations at § 120.1500(b), SBA may assess a civil monetary penalty against a 7(a) Lender. In determining whether to assess a civil monetary penalty and, if so, in what amount, SBA may consider: the gravity (e.g., severity and frequency) of the violation; the history of previous violations; the financial resources and good faith of the 7(a) Lender; and any other matters as justice may require. This penalty is authorized by the Small Business Act, 15 U.S.C. 657t(e)(2)(B).

This rule amends § 120.1500(b)(2) to adjust the current civil penalty from \$268,694 to \$289,504. The current civil penalty of \$268,694 was multiplied by the multiplier of 1.07745 to reach a product of \$289,504, rounded to the nearest dollar.

4. 13 CFR 142.1 – Overview of Regulations.

SBA has promulgated regulations at 13 CFR part 142 to implement the civil penalties authorized by the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801-3812. Under the current regulation at 13 CFR 142.1(b), a person who submits, or causes to be submitted, a false claim or a false statement to SBA is subject to a civil penalty of not more than \$12,537, for each statement or claim.

This rule amends § 142.1(b) to adjust the current civil penalty from \$12,537 to \$13,508. The adjusted civil penalty amount was calculated by multiplying the current

civil penalty of \$12,537 by the multiplier of 1.07745 to reach a product of \$13,508, rounded to the nearest dollar.

5. 13 CFR 146.400 – Penalties.

SBA’s regulations at 13 CFR part 146 govern lobbying activities by recipients of Federal financial assistance. These regulations implement the authority in 31 U.S.C. 1352 and impose penalties on any recipient that fails to comply with certain requirements in the part. Specifically, under § 146.400(a) and (b), penalties may be imposed on those who make prohibited expenditures or fail to file the required disclosure forms or to amend such forms, if necessary.

This rule amends § 146.400(a) and (b) to adjust the current civil penalty amounts to “not less than \$23,727 and not more than \$237,268.” The current civil penalty amounts of \$22,021 and \$220,213 were multiplied by the multiplier of 1.07745 to reach a product of \$23,727 and \$237,268, respectively, rounded to the nearest dollar.

This rule also amends § 146.400(e) to adjust the civil penalty that may be imposed for a first-time violation of § 146.400(a) and (b) to \$23,727 and to adjust the civil penalty that may be imposed for second and subsequent offenses to “not less than \$23,727 and not more than \$237,268.” The current civil penalty amounts of \$22,021 and \$220,213 were multiplied by the multiplier of 1.077455 to reach a product of \$23,727 and \$237,268, respectively, rounded to the nearest dollar.

Compliance with Executive Orders 12866, 12988, 13132, and the Administrative Procedure Act (5 U.S.C. 553), the Congressional Review Act (5 U.S.C. 801–808), the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601-612).

Executive Order 12866

The Office of Management and Budget has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purpose of Executive Order 13132, SBA determined that the rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this final rule has no federalism implications warranting preparation of a federalism assessment.

The Administrative Procedure Act (APA)

The APA requires agencies generally to provide notice and an opportunity for public comment before adopting a rule unless the agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b). The APA also requires agencies to allow at least 30 days after publication for a final rule to become effective “except as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d). For the following reasons prior public notice, an opportunity for public comment, and a delayed effective date are not required for this rule. The 2015 Inflation Adjustment Act directs agencies to adjust their civil penalties annually notwithstanding section 553 of the APA. 28 U.S.C. 2461 note, sec. 4(b)(2).

This exemption from the notice and comment, and delayed effective date requirements of the APA, in effect provides SBA with the good cause justification to promulgate this as a final rule that will become effective immediately on the date it is published in the *Federal Register*. Additionally, the 2015 Inflation Adjustment Act provides a non-discretionary cost-of-living formula for making the annual adjustment to

the civil monetary penalties; SBA merely performs the ministerial task of calculating the amount of the adjustments. Therefore, even without the statutory exemption from the APA, notice and comment would be unnecessary.

The Congressional Review Act (CRA)

The Office of Management and Budget determined that this rule is not a major rule under 5 U.S.C. 804(2).

Paperwork Reduction Act

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to consider the effect of their regulatory actions on small entities, including small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of such small entities. However, the RFA requires such analysis only where notice and comment rulemaking are required. As stated above, SBA has express statutory authority to issue this rule without regard to the notice and comment requirement of the APA. Since notice and comment is not required before this rule is issued, SBA is not required to prepare a regulatory analysis.

List of Subjects

13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 120

Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 142

Administrative practice and procedure, Claims, Fraud, Penalties.

13 CFR Part 146

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, SBA amends 13 CFR parts 107, 120, 142, and 146 as follows:

PART 107 – SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681, 683, 687(c), 687b, 687d, 687g, 687m.

§ 107.665 [Amended]

2. In § 107.665, remove “\$291” and add in its place “\$314”.

PART 120 – BUSINESS LOANS

3. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h), and (m), and note, 636m, 650, 657t, and note, 657u, and note, 687(f), 696(3), and (7), and note, 697, 697a and e, and note; Public Law 116-260, 134 Stat. 1182.

§ 120.465 [Amended]

4. In § 120.465, amend paragraph (b) by removing “\$7,244” and adding in its place “\$7,805”.

§ 120.1500 [Amended]

5. In § 120.1500, amend paragraph (b)(2) by removing “\$268,694” and adding in its place “289,504”.

PART 142 – PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

6. The authority citation for part 142 continues to read as follows:

Authority: 15 U.S.C. 634(b); 31 U.S.C. 3803(g)(2).

§ 142.1 [Amended]

7. In § 142.1, amend paragraph (b) by removing “\$12,537” and adding in its place “\$13,508”.

PART 146 – NEW RESTRICTIONS ON LOBBYING

8. The authority citation for part 146 is revised to read as follows:

Authority: 31 U.S.C. 1352 and 15 U.S.C. 634(b)(6).

§ 146.400 [Amended]

9. Amend § 146.400 by removing “\$22,021” wherever it appears and adding in its place “\$23,727” and by removing “\$220,213” wherever it appears and adding in its place “\$237,268”.

Isabella Casillas Guzman
Administrator.

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